

AN ACT

ENTITLED, An Act to prohibit misleading unsolicited commercial e-mails.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

- (1) "Assist the transmission," actions taken by a person to provide substantial assistance or support that enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message if the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any practice that violates this chapter;
- (2) "Commercial electronic mail message," an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease. The term does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, if the sender has agreed to such an arrangement;
- (3) "Electronic mail address," a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered;
- (4) "Initiate the transmission," the action by the original sender of an electronic mail message. The term does not refer to the action by any intervening interactive computer service that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message if it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates this chapter;

- (5) "Interactive computer service," any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and systems operated or services offered by libraries or educational institutions;
- (6) "Internet domain name," a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

Section 2. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as follows:

No person may initiate the transmission, conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail message from a computer located in South Dakota or to an electronic mail address that the sender knows, or has reason to know, is held by a South Dakota resident that:

- (1) Uses a third party's internet domain name without permission of the third party, or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or
- (2) Contains false or misleading information in the subject line.

For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is a South Dakota resident if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address.

Section 3. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as follows:

The Legislature finds that the practices covered by this Act are matters vitally affecting the public

interest for the purpose of protecting the public. A violation of this Act is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying this chapter.

Section 4. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as follows:

An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will be, sent in violation of this Act.

No interactive computer service is liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of this Act.

Section 5. That chapter 37-24 be amended by adding thereto a NEW SECTION to read as follows:

A recipient or a provider of internet access services may bring either or both of the following actions:

- (1) An action based on a violation of section 2 of this Act to enjoin such violation.
- (2) An action to recover damages for such a violation in an amount equal to the greater of:
 - (a) The amount of the actual monetary loss; or
 - (b) Five hundred dollars for each violation, not to exceed a total of ten thousand dollars.

If the court finds that the defendant willfully, knowingly, or repeatedly violated section 2 of this Act, the court may increase the amount of the award to an amount equal to not more than three times the amount available under this section.

In any such action, the court may require an undertaking for the payment of the costs of such

action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

At the request of any party to an action brought pursuant to this section or any other participant in such an action, the court may issue protective orders and conduct legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any such party or participant.

An Act to prohibit misleading unsolicited commercial e-mails.

=====

I certify that the attached Act
originated in the

SENATE as Bill No. 183

Secretary of the Senate
=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 183

File No. _____

Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State